INDIANA JUDICIAL CENTER

CASE CLIPS

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CRIMINAL LAW ISSUES

VOL. XXIX, NO. 9 **March 8, 2002**

STATE v. GERSCHOFFER, No. 71S05-0102-CR-106, ____N.E.2d____ (Ind. Mar. 5, 2002)
SHEPARD, C. J.

In this case the Court of Appeals interpreted Article 1, Section 11 of the Indiana Constitution to prohibit all sobriety checkpoints as unreasonable seizures. We disagree, but affirm suppression of the evidence obtained from the roadblock in this case because the procedures followed did not satisfy the requirements of Section 11, a part of Indiana's Bill of Rights.

[T]he Indiana State Police and the Mishawaka Police Department jointly conducted a sobriety checkpoint on McKinley Avenue, just west of its intersection with Grape Road, in Mishawaka. Jarrod Gerschoffer was one of seventy drivers pulled aside for observation. The officer who greeted Gerschoffer smelled alcohol and noted Gerschoffer's glassy, bloodshot eyes and slurred speech. . . .

. . . .

Gerschoffer moved to suppress all evidence obtained from the checkpoint, ... [T]he trial court granted the motion, holding that although the checkpoint satisfied the Fourth Amendment, the failure to obtain a warrant was unreasonable under Article 1, Section 11.

The Court of Appeals affirmed, holding that "a sobriety checkpoint . . . conducted absent probable cause or reasonable suspicion of illegal activity, constitutes an unreasonable seizure as proscribed by Article 1, Section 11." State v. Gerschoffer, 738 N.E.2d 713, 726 (Ind. Ct. App. 2000). We granted transfer to this Court, thus vacating that opinion. 753 N.E.2d 6 (Ind. 2001).

. . . .

A minimally intrusive roadblock designed and implemented on neutral criteria that

safely and effectively targets a serious danger specific to vehicular operation is constitutionally reasonable, unlike the random and purely discretionary stops we have disapproved. See Baldwin v. Reagan, 715 N.E.2d at 337 (requiring individualized suspicion of a seat belt law violation before stopping a motorist). . . .

We therefore join those jurisdictions rejecting the contention that all roadblocks are per se violations of state constitutional requirements. [Footnote omitted.] . . .

. . . .

We agree that a properly approved, neutral plan would help support the reasonableness of the sobriety checkpoint. Here, Sergeant Gary Coffie, the officer in charge for the State Police, testified that he followed written federal and state police

guidelines. [Citation to record omitted.] Those guidelines are not part of the record, however, so we cannot assess their efficacy.

. . . .

A press release indicated that this checkpoint was intended to catch drunk drivers, seat belt and child restraint violations, and "other violations." [Citation to record omitted.] Corporal Timothy Williams, the officer in charge for the Mishawaka Police Department, indicated that the site selection was intended to reduce speeding and "cruising." [Citation to record omitted.] He said, "[I]t's a good way to kind of slow traffic down, make sure everybody is doing what they're supposed to." [Citation omitted.]

Williams also said that another goal was "[t]o make sure . . . everybody's got all the proper information with them," including "[l]icense, registration, insurance information." [Citation to record omitted.] The Vermont Supreme Court once noted, and we agree, that "[t]he thought that an American can be compelled to 'show his papers' before exercising his right to walk the streets, drive the highways or board the trains is repugnant to American institutions and ideals." [Citation omitted.]

Here, the State has offered a montage of objectives, including the generic law enforcement goal of "mak[ing] sure everybody is doing what they're supposed to." [Citation to record omitted.] This sounds more like a generalized dragnet than a minimally intrusive, neutral effort to remove impaired drivers from the roadways before they hurt someone.

The evening's statistics reinforce this conclusion. Seventy stops produced fourteen traffic arrests and thirty-four warnings. [Citation to record omitted.] Only two citations were for OWI.[9]

. . . The officers in charge sensibly chose a well-lighted, reasonably busy area that was amenable to traffic control. [Citation to record omitted.] They chose this particular site partially because they had conducted a checkpoint in the same location the previous winter and wanted to compare results. [Citation to record omitted.]

When asked the reasons for the site selection, however, neither officer indicated that drunk driving had been a particular problem at this location. [Citation to record omitted.] . . .

The officers operated the roadblock from 11:30 p.m. until 1:30 a.m. because "traffic is easier to handle; it's not exactly that we were going to get a lot of [OWI] arrests." [Citation to record omitted.] Also, businesses were closed at that hour and shoppers were no longer out, but it was still early enough for a "substantial amount of traffic." [Citation to record omitted.] Finally, the timing was convenient based upon officer shift changes. [Citation omitted.] As with location, the State did not link the timing to the danger being addressed.

To be constitutionally reasonable, the location and timing of sobriety checkpoints should take into account police officer safety, public safety, and public convenience. The roadblock should also effectively target the public danger of impaired driving. Here, the State did not offer any evidence of objective considerations such as an unusually high rate of OWI-related accidents or arrests in the chosen area. The State has therefore not shown

that this roadblock was sufficiently related to the legitimate law enforcement purpose of combating drunk driving.

. . . .

[S]ergeant Coffie flagged in five vehicles at a time, then allowed other traffic to flow through. (R. at 90-91.) As soon as all five vehicles were cleared, Coffie flagged in five more, without regard to vehicle type. (R. at 91, 122-24.) This procedure satisfied the Fourth Amendment in Garcia, 500 N.E.2d at 161, and it seems a reasonably neutral and consistent method.

Other procedures, however, were not as carefully controlled. Aside from being told to be "professional and courteous," officers received no specific directive on how to approach and screen motorists. [Citation to record omitted.] Each individual officer was therefore

[9] The statistical summary breaks this number down as one "9-30-5-2 (OWI)" and one "9-30-5-3 (PRIOR)." Gerschoffer was charged under both of these statutes, so it is unclear whether anyone other than Gerschoffer was arrested for OWI during the roadblock.

allowed to decide whether to immediately request license, registration, and/or insurance information from all drivers or only from some of them based on an appearance of impairment or other grounds. [Citation to record omitted.] No standardized instructions were given to ensure that officers addressed drivers in a consistent manner. [Footnote omitted.] [Citation to record omitted.] . . .

The State has therefore not shown that it provided sufficiently explicit guidance to ensure against arbitrary or inconsistent actions by the screening officers. This very important factor weighs against the reasonableness of the roadblock.

. . . If the officer approaching a car did not detect any violations, the length of detention averaged four minutes. [Citation to record omitted.] In Garcia, stops approximating two to three minutes satisfied the Fourth Amendment. [Citation omitted.] In Sitz, the average detention period was only twenty-five seconds. [Citation omitted.]

The reasonableness of this detention period is questionable. . . . [I]t is not clear that a well-trained officer needs this much time to assess driver sobriety. [Citation omitted.]

. . . .

[W]e have no evidence from which to infer that the low apprehension rate was the effect of a successful media blitz. . . .

. . . We cannot infer, absent any proven publicity, that this checkpoint effectively deterred potential offenders. [Footnote omitted.]

. . . In light of the above factors, with particular emphasis on the high level of officer discretion and the very weak link between the public danger posed by OWI and the objectives, location and timing of the checkpoint, the State did not meet its burden to show that this roadblock was constitutionally reasonable under Article 1, Section 11. . . .

. . . .

SULLIVAN, BOEHM and RUCKER,, JJ., concur.

DICKSON, J., concurs and dissents with separate opinion as follows:

I join Part I and, except as noted below, Part II of the majority opinion. I respectfully dissent, however, to Part III, believing that the particular roadblock challenged here was not unreasonable in the totality of the circumstances.

. . . .

[I] do not share the majority's critical view of the Mishawaka roadblock's objective, location, and timing; the lack of compelled uniformity regarding the officers' approaching and screening of motorists; the lack of sufficient avoidability; and the lack of sufficient effectiveness. Notwithstanding the possible excessive average length of detention, I believe that the record establishes that the roadblock was not unreasonable in the totality of

the circumstances. In my judgment, the trial court erred in granting the motion to suppress.

VANWINKLE v. STATE, No. 61A05-0107-CR-301, ____N.E.2d____ (Ind. App. Feb. 28, 2002).

MATHIAS, J.

When Officer Guinn and Sheriff Bollinger approached the front door, they noticed an open window "with a fan in it apparently extracting the ether odor from inside the . . . mobile home." Tr. p. 85. They also saw a propane tank on the ground next to the front porch, whose original valve had been replaced with a ball valve connected to a steel reinforced hose. The lower half of the tank was covered in a thick frost and the tank's replacement valve had a bluish green tint, which Sheriff Bollinger believed to be consistent with a tank

containing anhydrous ammonia (a chemical he knew is used to manufacture methamphetamine). Both officers believed the tank contained anhydrous ammonia. [Citation to record omitted.]

. . . .

Here, the police went to VanWinkle's residence for a legitimate reason, to conduct an investigation. Upon entering the property, the police did not stray from places that visitors to the property could be expected to go when they parked in VanWinkle's driveway and approached the residence, and they did not later stray from the front and rear entrances of VanWinkle's mobile home in order to reveal something that was otherwise hidden from their view. Because the front and rear entrances to VanWinkle's residence were not places where VanWinkle had a constitutionally protected reasonable expectation of privacy, we conclude that the initial entry onto the land, approach, and knock on the door of VanWinkle's residence did not violate the Fourth Amendment. For these same reasons, we also conclude that their initial entry and their approach and knock at the residence were reasonable conduct under Article I, Section 11 of the Indiana Constitution. [Footnote omitted.]

. . . .

The officers' reasonable suspicion at the time of their arrival at VanWinkle's residence matured into probable cause as the officers at the front door recognized that the converted propane tank likely contained anhydrous ammonia and when VanWinkle fled from the officers at the front door by exiting the back door of the residence. After Sheriff Bollinger knocked on the front door of the residence and announced the police presence, rather than answering the knock, VanWinkle ran to the back door of the residence, opened the back door, went down the steps of the residence and attempted to exit the wood-framed entry area.[Footnote omitted.] It was at this point that the three officers standing outside the door to the entry area (just in case anyone inside attempted to flee the residence) met VanWinkle.

At the time of VanWinkle's arrest, the officers at the rear of the residence were aware of the reports made to Officer Hartman of strong ether odors when cars were present and of suspected methamphetamine manufacturing. The officers were aware, either by their own knowledge or the shared knowledge of the other officers involved, that the illegal manufacture of methamphetamine requires the use of ether, although possession of ether alone is not illegal in Indiana. Also, from the time the officers arrived at the residence, they gained first-hand knowledge of the strong ether odors, the presence of cars in the driveway, and the residence's open windows and fan drawing air out of the residence in mid-winter weather. The officers at the rear of the residence knew that Sheriff Bollinger and Officer Guinn were going to knock on the front door, announce the police presence, and request consent to search the residence. These facts and circumstances within the knowledge of the officers at the rear of the residence were "sufficient to warrant a belief by

a person of reasonable caution that an offense [had] been committed and that the person to be arrested committed it." [Citation omitted.]

. . . .

As discussed above, the officers had probable cause to arrest VanWinkle. Therefore, at the point that VanWinkle was arrested outside of the residence, the officers suspected that VanWinkle was manufacturing methamphetamine, which they knew to be a process that could be torn down very quickly, and which they knew to be highly volatile because of the explosive nature of the chemicals used in the manufacturing process. Additionally and importantly, before entering the residence, Officer Kneeland asked VanWinkle if there were any other people in the residence, and he responded that there were two other people in the residence: his wife and his friend. [Footnote omitted.] The combined knowledge of the

fact that the manufacture of methamphetamine can be very dangerous and the fact that there were still other people in the residence would cause any reasonable police officer to see the immediate need to remove any remaining persons from the residence.

. . . .

The State argues that there were two legitimate justifications for the entry into and search of the residence: to conduct a protective sweep and to preserve evidence. We agree. Under the facts and circumstances before us, these justifications fall within the exceptions to the federal warrant requirement. [Citation omitted.]

Additionally, under Article I, Section 11 of the Indiana Constitution, the entry into the residence was reasonable because, had the officers taken the time to get a search warrant at that point, the people remaining in the residence could have been injured by the volatile manufacturing process, could have destroyed evidence, and/or could have attempted to inflict harm upon the officers or others. We therefore conclude that the officers' entry into and search of the residence in order to protect themselves and others from bodily harm and in order to preserve any evidence was justified under both the Fourth Amendment of the U.S. Constitution and Article I, Section 11 of the Indiana Constitution. [Footnote omitted.]

. . . .

BROOK, C.J. and RILEY, J. concur.

CIVIL LAW ISSUES

NORTHWESTERN SCHOOL CORP. v. LINKE, No. 34S05-0103-CV-151 ____N.E.2d____ (Ind. March 5, 2002).

SULLIVAN, J.

Rosa and Reena Linke, students in the Northwestern School Corporation in Howard County, contend that the school's random drug testing program violates their rights under the Indiana Constitution to be free from unreasonable searches and seizures. After weighing the students' privacy interests and the character of the search against the nature and immediacy of the governmental concern at issue, we conclude that the drug-testing program here is constitutional.

. . . .

The Linkes point out that we have held "that a police officer may not stop a motorist in Indiana for a possible seat belt violation unless that officer reasonably suspects that the driver or a passenger in the vehicle is not wearing a seat belt as required by law." Baldwin v. Reagan, 715 N.E.2d 332, 337 (Ind. 1999). . . .

We do not think the individualized suspicion requirement of Baldwin v. Reagan is so readily transferable to this case. Baldwin v. Reagan – and Moran and Brown before it – focused on the role of Section 11 in protecting those areas of life that Hoosiers regard as

private "from unreasonable police activity." [Citation omitted.] . . .

A search conducted by a school corporation is substantively different than a search conducted to enforce the law. . . .

. . . .

While Brown emphasized that reasonableness was the touchstone of Section 11 analysis, it framed the question as "whether, in the totality of these circumstances," the police conduct at issue was reasonable. 653 N.E.2d at 79-80. We believe that balancing the students' interests against the school corporation's better comports with this totality of the circumstances framework than a per se requirement of individualized suspicion.

. . . .

We adopt the analytical approach of Vernonia School District 47J v. Acton in these circumstances. Broadly stated, we will weigh the nature of the privacy interest upon which the search intrudes, the character of the intrusion that is complained of, and the nature and immediacy of the governmental concern to determine whether the Policy is reasonable under the totality of these circumstances. 515 U.S. at 658-660.

. . . .

In light of the totality of the circumstances, the Policy does not violate [Article I] Section 11 [of the Indiana Constitution]. Our constitution does not forbid schools from taking reasonable measures to deter drug abuse on their campuses but they must do so with due regard for the rights of students.

We reiterate that our evaluation of this matter is particularly influenced by the facts that students' privacy interests are less than those of adults and that both students and their parents or guardians must give consent. We have also been influenced in general by schools' custodial and protective interest in their students and in particular by the fact that the Policy was created with parent involvement as an element of a comprehensive interdiction program. Furthermore, the higher than average rate of drug use at NSC middle and high schools, the recent drug related deaths, and the continued presence of illegal drugs on campus strengthens NSC's legitimate interest in this matter. We do note that the strength of NSC's interest in deterring drug abuse is not uniform for all students. In this regard, the Policy is most defensible in regard to athletes and student drivers. The school's interest in protecting these students is increased by the risk of physical danger and, in the case of student athletes, by the fact that they represent the school as role models. While the rationale for testing students involved in co-curricular activities is not so strong, for the reasons already stated, it does not violate Section 11 in this case.

The Linkes also argue that the Policy violates the Privileges and Immunities Clause, art. I, § 23, of the Indiana Constitution ("Section 23"). . . .

. . . .

We agree with NSC that testing those students who are at an increased risk of physical harm or are role models and leaders by virtue of their participation in certain extracurricular activities is "reasonably related to achieving the school's purpose in providing for the health and safety of students, and undermining the effects of peer pressure by providing a legitimate reason for students to refuse to use illegal drugs and by encouraging students who use drugs to participate in drug treatment programs." [Citation omitted.] We find no violation of Section 23.

. . . .

SHEPARD, C.J. and DICKSON, J., concur.

BOEHM, J., dissents with separate opinion in which RUCKER, J., concurs as follows:

I respectfully dissent. The majority adopts the methodology of Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995), and concludes that NSC's drug testing fits within a very

narrow exception to the general probable cause requirement, the so-called "special needs" exception. However, assuming it is proper to analyze Indiana constitutional claims in the Vernonia framework, I do not agree that NSC has carried its burden of proving that its program meets the standard of reasonableness the "special needs" doctrine requires. Rather, this program amounts to imposition of a general random testing program with no sound footing in concern for the educational mission of the school corporation, as opposed to general law enforcement. Nor is there a justification for selecting these students from the general school population.

For many of the same reasons, I conclude that NSC's program violates the requirement of Article I, Section 23 of the Indiana Constitution that a classification must be

reasonably related to the characteristics—in this case, participation in certain school activities—that define the class.

. . . .

CHEATHAM v. POHLE, 40A01-0010-CV-329, ____N.E.2d____ (Ind. App. Feb. 28, 2002)
NAJAM, J.

Cheatham next contends that, on its face, Indiana Code Section 34-51-3-6 violates Article 1, Section 21 of the Indiana Constitution. Specifically, she argues that the State's right to collect 75% of her punitive damage award, without a corresponding obligation to pay any attorney's fees, unconstitutionally demands the services of her attorney without just compensation.[Footnote omitted.] We agree.

Cheatham maintains that this statute conflicts with Article 1, Section 21 of our state constitution, which provides, in pertinent part, that: "No person's particular services shall be demanded, without just compensation . . . ." (Emphasis added).

. . . [T]he standard Cheatham must meet to prevail on her claim under the particular services clause is well settled. Cheatham must meet the test described in Bayh v. Sonnenburg, 573 N.E.2d 398 (Ind. 1991), cert. denied. That test requires a party to show that he (1) performed particular services, (2) on the State's demand, (3) without just compensation. Id. at 411 [Citation omitted.]

. . . .

[A]t least since 1853, our supreme court has recognized that attorneys have a right to be compensated for services different from those that are required of ordinary citizens.

[B]y enacting Indiana Code Section 34-51-3-6, the State effectively compels all attorneys who win punitive damages for their clients to forfeit their right to collect fees from 75% of that award. In economic terms, this statute allows the state to become a "free rider" on the legal services of those attorneys who win punitive damages. [Citation omitted.]

. . . .

. . . [T]his statute presents a threat of legal process against all attorneys who fail to surrender to the State their right to collect fees and costs from 75% of a punitive damage award.

. . . Accordingly, we conclude that Cheatham's attorney provided legal services "on demand from the State."

. . . The third and final prong of the Sonnenburg analysis requires us to decide whether Indiana Code Section 34-51-3-6 withholds just compensation from those attorneys who win punitive damages for their clients. . . . Here, Indiana Code section 34-51-3-6 does not require the State to pay the prevailing party's counsel any fees or to reimburse counsel for

litigation costs and expenses. . . . The constitutional question is whether Indiana Code Section 34-51-3-6 allows the State to exploit an attorney's particular legal services without paying for them, not whether an attorney might conceivably fashion a fee agreement that compensates him for that portion of the award from which he is unable to collect fees.

SHARPNACK and RILEY, JJ. concur.

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CASE CLIPS TRANSFER TABLE

March 8, 2002

This table lists recent grants of transfer by the Indiana Supreme Court for published decisions of the Court of Appeals. It includes Judicial Center summaries of the opinions of the Court of Appeals vacated by the transfers and of the Supreme Court's opinions on transfer.

A CASE CLIPS transfer information feature was suggested by the Justices of the Indiana Supreme Court in response to trial court requests for more accessible information about grants of transfer. The table is prepared with assistance from the Supreme Court Administrator's Office, which sends the Judicial Center a weekly list of transfer grants.

A grant of transfer vacates the opinion of the Court of Appeals: "[i]f transfer be granted, the judgment and opinion or memorandum decision of the Court of Appeals shall thereupon be vacated and held for naught, except as to any portion thereof which is expressly adopted and incorporated by reference by the Supreme Court, and further, except where summarily affirmed by the Supreme Court." Indiana Appellate Rule 11(B)(3).

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
South Gibson School Board v. Sollman	728 N.E.2d 909 26A01-9906-CV-222	Denying student credit for all course-work he performed in the semester in which he was expelled was arbitrary and capricious; summer school is not included within the period of expulsion which may be imposed for conduct occurring in the first semester	9-14-00	
Shambaugh and Koorsen v. Carlisle	730 N.E.2d 796 02A03-9908-CV-325	Elevator passenger who was injured when elevator stopped and reversed directions after receiving false fire alarm signal brought negligence action against contractors that installed electrical wiring and fire alarm system in building. Held: contractors did not have control of elevator at time of accident and thus could not be held liable under doctrine of res ipsa loquitur.	10-24-00	3-1-02. Causation issue precludes summary judgment, and claims of specific negligence also prevent summary judgment.
S.T. v. State	733 N.E.2d 937 20A03-9912-JV-480	No ineffective assistance when (1) defense counsel failed to move to exclude two police witnesses due to state's failure to file witness list in compliance with local rule and (2) failed to show cause for defense failure to file its witness list under local rule with result that both defense witnesses were excluded on state's motion	10-24-00	
Tincher v. Davidson	731 N.E.2d 485 49A05-9912-CV-534	Affirms mistrial based on jury's failures to make comparative fault damage calculations correctly	11-22-00	2-19-02. 762 N.E.2d 1221. General verdict should not have been impeached with calculation form.

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
New Castle Lodge v. St. Board of Tx. Comm.	733 N.E.2d 36 49T10-9701-TA-113	Fraternal organization which owned lodge building was entitled to partial property tax exemption	11-22-00	
Reeder v. Harper	732 N.E.2d 1246 49A05-9909-CV-416	When filed, expert's affidavit sufficed to avoid summary judgment but affiant's death after the filing made his affidavit inadmissible and hence summary judgment properly granted.	1-11-01	
Holley v. Childress	730 N.E.2d 743 67A05-9905-JV-321	Facts did not suffice to overcome presumption non-custodial parent was fit so that temporary guardianship for deceased custodial parent's new spouse was error.	1-11-01	
Davidson v. State	735 N.E.2d 325 22A01-0004-PC-116	Ineffective assistance for counsel not to have demanded mandatory severance of charges of "same or similar character" when failure to do so resulted in court's having discretion to order consecutive sentences.	1-17-01	2-19-02. Ineffective assistance not shown from failure to move to server, as some strategic advantage could have come from joinder
Mercantile Nat'l Bank v. First Builders	732 N.E.2d 1287 45A03-9904-CV-132	Materialman's notice to owner of intent to hold personally liable for material furnished contractor, IC 32-8-3-9, sufficed even though it was filed after summary judgment had been requested but not yet entered on initial complaint for mechanic's lien foreclosure	2-9-01	
State Farm Fire & Casualty v. T.B.	728 N.E.2d 919 53A01-9908-CV-266	(1) insurer acted at its own peril in electing not to defend under reservation of rights or seek declaratory judgment that it had no duty to defend; (2) insurer was collaterally estopped from asserting defense of childcare exclusion that was addressed in consent judgment; (3) exception to child care exclusion applied in any event; and (4) insurer's liability was limited to $300,000 plus post-judgment interest on entire amount of judgment until payment of its limits.	2-9-01	2-21-02. No collateral estoppel on child care exclusion which was not one of the matters "necessarily determined" in the consent judgment.

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Merritt v. Evansville Vanderburgh School Corp	735 N.E.2d 269 82A01-912-CV-421	error to refuse to excuse for cause two venire persons employed by defendant even though they asserted they could nonetheless be impartial and attentive	2-9-01	
State v. Gerschoffer	738 N.E.2d 713 72A05-0003-CR0116	Sobriety checkpoint searches are prohibited by Indiana Constitution.	2-14-01	3-5-02. Ind. Const. does not prohibit sobriety checkpoints, but here, the checkpoint failed to meet constitutional requirements.
Healthscript, Inc. v. State	724 N.E.2d 265, *rhrg.* 740 N.E.2d 562 49A05-9908-CR-370	Medicare fraud crimes do not include violations of state administrative regulations.	2-14-01	
Vadas v. Vadas	728 N.E.2d 250 45A04-9901-CV-18	Husband's father, whom wife sought to join, was never served (wife gave husband's attorney motion to join father) but is held to have submitted to divorce court's jurisdiction by appearing as witness; since father was joined, does not reach dispute in cases whether property titled to third parties not joined may be in the marital estate.	3-1-01	2-22-02. 762 N.E.2d 1234. Expectation couple would buy house they liven in insufficient to put house into marital estate; submission to jurisdiction by testifying not addressed.
N.D.F. v. State	735 N.E.2d 321 No. 49A02-0003-JV-164	Juvenile determinate sentencing statute was intended to incorporate adult habitual criminal offender sequential requirements for the two "prior unrelated delinquency adjudications"; thus finding of two prior adjudications, without finding or evidence of habitual offender-type sequence, was error	3-2-01	
Robertson v. State	740 N.E.2d 574 49A02-0006-CR-383	Hallway outside defendant's apartment was part of his "dwelling" for purposes of handgun license statute.	3-9-01	
Bradley v. City of New Castle	730 N.E.2d 771 33A01-9807-CV-281	Extent of changes to plan made in proceeding for remonstrance to annexation violated annexation fiscal plan requirement.	4-6-01	
King v. Northeast Security	732 N.E.2d 824 49A02-9907-CV-498	School had common law duty to protect student from criminal violence in its parking lot; security company with parking lot contract not liable to student under third party beneficiary rationale.	4-6-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
State v. Hammond	737 N.E.2d 425 41A04-0003-PC-126	Amendment of driving while suspended statute to require "validly" suspended license is properly applied to offense committed prior to amendment, which made "ameliorative" change to substantive crime intended to avoid supreme court's construction of statute as in effect of time of offense.	4-6-01	1-28-02. 761 N.E.2d 812. Statute work no change, and an untimely or incomplete suspension notice does not affect validity of suspension.
Buchanan v. State	742 N.E.2d 1018 18A04-0004-CR-167	Admission of pornographic material picturing children taken from child-molesting defendant's home was error under Ev. Rule 404(b).	5-10-01	
McCary v. State	739 N.E.2d 193 49A02-0004-PC-226	Failure to interview policeman/probable-cause-affiant, when interview would have produced exculpatory evidence, was ineffective assistance of trial. Counsel on direct appeal was ineffective for noting issue but failing to make record of it via p.c. proceeding while raising ineffective assistance in other respects. Post-conviction court erred in holding res judicata applied under *Woods v. State* holding handed down after direct appeal..	5-10-01	1-18-02. 761 N.E.2d 389. Trial counsel ineffectiveness raised on direct appeal, and *res judicata.* No ineffective appellate counsel for having decided to raise trial ineffectiveness on direct appeal.
Catt v. Board of Comm'rs of Knox County	736 N.E.2d 341 (Ind. Ct. App. 2000) No. 42A01-9911-CV-396	County had duty of reasonable care to public to keep road in safe condition, and County's knowledge of repeated wash-outs of culvert and its continued failure to repair meant that wash-out due to rain was not a "temporary condition" giving County immunity.	6-14-01	
Ind. Dep't of Environmental Mgt. v. Bourbon Mini Mart, Inc.	741 N.E.2d 361 No. 50A03-9912-CV-476	(1) third-party plaintiffs were collaterally estopped from pursuing indemnity claim against automobile dealership; (2) third-party plaintiffs were collaterally estopped from pursuing indemnity claim against gasoline supplier pursuant to pre-amended version of state Underground Storage Tank (UST) laws; (3) amendment to state UST laws, which eliminated requirement that party seeking contribution toward remediation be faultless in causing leak, did not apply retroactively so as to allow contribution for response costs that were incurred before its effective date; and (4) third-party plaintiffs' action against gasoline supplier to recover ongoing remediation costs was not time barred.	6-14-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
In re Ordinance No. X-03-96	744 N.E.2d 996 02A05-0002-CV-77	Annexation fiscal plan must have noncapital services estimates from a year after annexation and capital improvement estimates from three years after annexation.	7-18-01	
Corr v. Schultz	743 N.E.2d 1194 71A03-0006-CV-216	Construes uninsured motorist statutes to require comparison of what negligent party's insurer actually pays out with amount of insured's uninsured coverage; rejects prior Court of Appeals decision, *Sanders*, 644 N.E.2d 884, that uninsured statutes use comparison of negligent party's liability limits to uninsured coverage limit ("policy limits to policy limits" comparison); notes that not-for-publication decision from same accident, *Corr v. American Family Insurance*, used *Sanders* to hold that the correct analysis was to "compare the $600,000 per accident bodily injury liability limit under the two policies covering Balderas [negligent driver] to the $600,000 per accident underinsured motor vehicle limit of the policies under which Janel [Corr] was an insured; transfer also granted 7-18-01 in this unreported *Corr* case.	7-18-01	
Friedline v. Shelby Insurance Co.	739 N.E.2d 178 71A03-0004-CV-132	Applies Indiana Supreme Court cases finding ambiguity in liability policies' exclusions for "sudden and accidental" and "pollutant" as applied to gasoline to hold that "pollutants" exclusion as applied to carpet installation substances was ambiguous and that insurance company's refusal to defend, made with knowledge of these Supreme Court ambiguity decisions, was in bad faith.	7-18-01	
St. Vincent Hospital v. Steele	742 N.E.2d 1029 34A02-0005-CV-294	IC 22-2-5-2 Wage Payment Statute requires not only payment of wages at the usual frequency (e.g., each week, etc.) but also in the correct amount, so Hospital which relied on federal legislation and federal regulatory interpretation for its refusal to pay physician contract compensation amount was liable for attorney fees and liquidated damages under Statute.	7-18-01	

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Smith v. State	748 N.E.2d 895 29A02-00100PC-640	Error to find PCR laches when petition was filed within 27 days of sentencing and all ensuing delays due to Public Defender; guilty plea to six theft counts, for stealing a single checkbook containing the six checks, was unintelligent due to counsel's failure to advise of "single larceny" rule; the theft of the checkbook and ensuing deposits of six forged checks at six different branches of the same bank in the same county "within a matter of hours" were a "single episode of criminal conduct" subject to limits on consecutive sentencing and counsel's failure to discuss the single episode limit also rendered plea unintelligent.	7-19-01	
Martin v. State	748 N.E.2d 428 03A01-0012-PC-412	Holds that no credit for time served is earned by one on probation as a condition of probation, distinguishing *Dishroon v. State* noting 2001 amendment providing for such credit is inapplicable.	8-10-01	
Dunson v. Dunson	744 N.E.2d 960 (Ind. Ct. App. 2001) 34A02-0006-CV-375	Construes emancipation statute to require only that child not be under the care or control of either parent without any requirement he also be able to support himself without parental assistance.	8-13-01	
D'Paffo v. State	749 N.E.2d 1235 (Ind. Ct. App. 2001) 28A004-0010-CR-442	Child molesting instruction's omission of element of intent to gratify sexual desires when touching was fundamental error, not waived by failure of appellant to object, notwithstanding defense that victim was never touched at all. When witnesses had been cross-examined and given chances to explain prior inconsistent statements, the statements themselves were properly excluded as impeachment, Evidence Rule 613.	8-24-01	
Farley Neighborhood Association v. Town of Speedway	747 N.E.2d 1132 49S02-0101-CR-43	Continuation of 45-year-old 50% surcharge on sewage service to customers outside municipality was arbitrary, irrational, and discriminatory..	9-20-01	
Hall Drive Ins, Hall's Guesthouse v. City of Fort Wayne	747 N.E.2d 638 02A04-0005-CV-219	Restaurant was subject to exception to City's anti-smoking ordinance.	9-20-01	
Hall Drive Ins, Triangle Park v. City of Fort Wayne	747 N.E.2d 643 02A03-0005-CV-189	Companion case to *Hall Drive Ins, Hall's Guesthouse v. City of Fort Wayne*, above	9-20-01	
Hinojosa v. State	752 N.E.2d 107 45A05-0010-CR-450	Third party may obtain grand jury transcripts based on statutory "particularized need," as here with police officer "whistleblower."	11-15-01	

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Bowers v. Kushnic	743 N.E.2d 787 45A04-0004-CV-168	Under rule that, if the insured has done everything within her power to effect the change of beneficiary, substantial compliance with policy requirements can be sufficient to change the beneficiary, facts were not sufficient to show intent to change.	11-15-01	
Family and Social Services Admin. v. Schluttenhofer	750 N.E.2d 429 No. 91A02-0010-CV-638	Payment for medical expenses from injured's employer's policy was subject to IC 34-51-2-19 proportionality reduction of Medicaid lien.	11-15-01	
Poananski v. Hovath .	749 N.E.2d 1283 No. 71A03-0101-CV-34	For summary judgment, the very fact that a dog bit a human without provocation is evidence from which a reasonable inference can be made that the dog had vicious tendencies, and it may be further inferred that if the dog had vicious tendencies based on this one incident, then a question of fact exists as to whether the dog owner knew or should have known of these tendencies	11-15-01	
Stegemoller v. AcandS, Inc.	749 N.E.2d 1216 No. 49A02-0006-CV-390	Wife of insulator who worked with asbestos did not qualify as a "bystander" who was reasonably expected to be in the vicinity of the product "during its reasonably expected use," and thus, she could not recover under Indiana Product Liability Act (IPLA).	11-15-01	
Ringham v. State	753 N.E.2d 29 No. 49A02-0009-CR-577	Reversible error not to have complied with Marion Superior statute which required an elected judge return to handle trial when prompt objection was made to master commissioner's presiding.	12-13-01	
Ratliff v. State	753 N.E.2d 38 No. 49A02-0010-CR-677	At scene of fleeing suspect's auto crash, police could have searched vehicle under either lawful arrest or "fleeting evidence" auto exceptions to warrant requirement, but after vehicle had been taken to police station to be searched neither exception continued to apply and warrant or lawful inventory search was required.	12-20-01	
R.L. McCoy, Inc. v. Jack	752 N.E.2d 67 No. 49A02-0011-CV-749	When settlement agreement required negligence plaintiff to repay any excess to settling defendant (who would be nonparty at trial) if 1) the settlement payment amount exceeded the nonparty verdict; and 2) the excess would have operated as a set-off to another of the defendants *if the agreement were not a loan,* defendant was entitled to be repaid amount settlement exceeded its nonparty liability at trial.	12-27-01	

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Hollen v. State	740 N.E.2d 149	"Unless the trial court assigns a specific weight to each aggravator" the appellate court must "guess at the Respective weight assigned to each factor."	5-25-01	1-23-02. 761 N.E.2d 398. Court need not assign weight to each sentencing factor.
Becker v. Kreilein	754 N.E.2d 939	Summary judgment not proper as whether negligent work by neighbor's sewer contractor breach a duty to plaintiff was a jury question; also issues of fact on acceptance of contractor's work prevented summary judgment claim against contractor.	2-22-02	
Garner v. State	754 N.E.2d 984	Child molesting allegation in a 5-month period sufficiently specific. Pre-trial discover of evidence provided adequate notice of charge. Evidence of other molestings of same child in 5-month period not "other wrongs" evidence subject to 404(b).	2-22-02	
Wal-Mart Stores, Inc. v. Wright	754 N.E.2d 1013	No error in instructing that violations of defendant's safety manual were proper evidence on degree of care defendant considered ordinary care.	2-22-02	
Stonger v. Sorrell	750 N.E.2d 391	Admission of custody evaluations later shown to have been fraudulent required new trial, even though party presenting them may not have had intent to defraud the court and trial court itself concluded fabrication did not count for much.	2-22-02	
Meeks v. State	759 N.E.2d 1126	Defendant not entitled to an instruction that jury had "latitude to refuse to enforce the law's hashness when justice so requires."		